MORTGAGE BANKERS ASSOCIATION
Investing in communities

May 21, 2010

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Federal Communications Commission Proposed Rule on the Telephone Consumer Protection Act (TCPA), (CG Docket No. 02-278)

Dear Ms. Dortch:

The Mortgage Bankers Association[1] (MBA) welcomes the opportunity to comment on the regulations proposed by the United States Federal Communications Commission (FCC) concerning the Telephone Consumer Protection Act (TCPA). We understand the purpose of the revisions is to harmonize FCC rules with the Federal Trade Commission's (FTC's) recently amended Telemarketing Sales Rule (TSR), while balancing the legislative history indicating that the TCPA is not intended "to unduly interfere with ongoing business relationships."[2] The House Committee on Energy and Commerce recognized the importance of not interfering with business relationships when it stated in its report, "the bill reflects a balance the Committee reached between barring all calls to those subscribers who objected to unsolicited calls, and a desire to not unduly interfere with ongoing business relationships."[3]

While we acknowledge the importance of laws protecting consumers from unwanted and intrusive telemarketing calls, we are particularly concerned about several aspects of the proposed rule that may have a negative impact on efforts by mortgage loan servicers to reach their borrowers on critical matters related to the servicing of their loan. **For all purposes related to the servicing of the mortgage loan, including collection of delinquent payments and related discussions of all loss mitigation programs designed to assist the borrower in curing the delinquency, mortgage servicers should have the right to use auto dialers and leave prerecorded messages on all phone numbers given to them by their borrowers without obtaining prior written consent, whether mobile phones or residential phones.**

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.
[2] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,* CG Docket No. 02-278 (Notice of Proposed Rulemaking released Jan. 22, 2010)(*"NPRM")* ¶ 24.
[3] H.R. Rep. No. 317, 102nd Cong., 1st Sess. 13 (1991).

We are most concerned about the following aspects of the proposed rule:

1. The imposition of a prior express *written* consent to initiate a call to a cell phone using an auto dialer or prerecorded voice message, regardless of the purpose of the call and the fact that such cell phone number was provided by the consumer as part of the transaction. *As further discussed below, customers should be deemed to have given prior express written consent by having provided a mobile phone number as part of the business transaction.*

2. The imposition of a prior express *written* consent to leave prerecorded or artificial "telemarketing" messages on residential telephone numbers. *As further discussed below, it is critical that the FCC acknowledge that mortgage servicers calling customers in relation to all types of loss mitigation, including loan modifications, refinances and other payment plans for the purpose of avoiding foreclosure, are not considered telemarketing and, therefore, are not within the scope of this provision.*

3. The elimination of the established business relationship (EBR) exemption, which currently allows prerecorded or artificial "telemarketing" messages to residential telephone numbers without the borrower's prior express written consent. *As discussed below, the FCC should retain the EBR exemption given the importance of businesses' ability to communicate with their customers and the benefits to existing customers.*

I. Importance of Telephone Communication Given Government and Industry Efforts to Avoid Foreclosure

Contact with borrowers has never been more important. With foreclosures skyrocketing, the industry, Obama administration, Congress and many state legislatures and regulators have worked tirelessly to improve loss mitigation tools to help struggling consumers save their homes.[4] To accomplish this lofty goal, servicers must have the ability to use all available means to attempt contact with consumers. All government programs today require telephone communication with borrowers for various reasons, but especially for loss mitigation and foreclosure avoidance. Specifically, HUD[5] and VA[6] require servicers to make contact with borrowers by telephone in an effort to assist them in curing loan delinquencies. Additionally, President Obama through the Treasury Department is responsible for creating the Making Home Affordable (MHA) program, which includes the Home Affordable Modification Program (HAMP), the Home Affordable Refinance Program (HARP), Home Affordable Foreclosure Alternative Program (HAFA) and Home Affordable Unemployment Program (UP). This March, the administration issued new customer contact requirements in which it dedicated an entire section to "Borrower Communications." Under Supplemental Directive 10-02, servicers participating in HAMP are required to make a minimum of four telephone calls to the last known phone numbers of record for the borrower at different times of the day in an attempt to make contact with the borrower.[7] The Supplemental Directive does not preclude a servicer from leaving a prerecorded telephone message or prevent the servicer from using an auto dialing service to make the call. On the contrary, the Supplemental Directive requires servicers to satisfy "a Reasonable Effort standard" in its outreach to borrowers.[8]

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[4] See Exhibit A: Summary of Current Foreclosure Avoidance Efforts.
[5] 24 CFR § 203.600 (2009).
[6] 38 CFR § 36.4850 (2009).
[7] *Treasury Department, Supplemental Directive* 10-02 (March 24, 2010). *See*: http://michaeljcoxlaw.com/assets/programupdate.pdf
[8] Treasury Department, Supplemental Directive 10-02 at 3.

In many cases, borrowers have given up or are reluctant to talk to their servicer because they think it is too late. This makes the servicer's calls to borrowers that much more important. Often one phone conversation can make the difference between whether a borrower gets to stay in their home or loses their home.

Foreclosure rates have increased dramatically during the past several years. According to MBA's First Quarter 2010 National Delinquency Survey, 10.06 percent of home mortgages were at least 30 days delinquent. Assuming common servicing practices that means that large institutions with 6 million or more loans must make more than 2 million calls a month to reach delinquent borrowers in attempt to help them save their homes. Other informational calls about a borrower's loan add to the total calls required per month. Ignoring available technology to achieve a positive outcome seems unreasonable and unwise.

Both rules discussed above, if applied to mortgage loan servicing, would have a devastating effect on a servicer's ability to provide useful and often critical services to their customers related to their mortgage loan. Any efforts by FCC to modify its rules must not negatively impact these contacts.

Below is a more detailed discussion of MBA's concerns.

II. MBA Comments Regarding Calls to Cell Phones

A. When a borrower has provided a cell phone number in connection with the business transaction, mortgage servicers should be permitted to use that number to contact the borrower using an automated dialing system or an artificial or prerecorded voice messages for all purposes related to servicing of the loan, including collections and loss mitigation.

In January 2008, the FCC issued Declaratory Ruling 07-232, which held that autodialed and prerecorded message calls to wireless numbers provided by the called party in connection with an existing debt are made with the "prior express consent" of the called party.[9] Specifically, the Declaratory Ruling established parameters by which borrowers are deemed to provide prior express consent to be called on cell phones. "We conclude that the provision of a cell phone number to a creditor, e.g., as part of a credit application, reasonably evidences prior express consent by the cell phone subscriber to be contacted at that number regarding the debt."[10] The Declaratory Ruling further concludes "that the creditor should be responsible for demonstrating that the consumer provided prior express consent."[11] These requirements offer significant and appropriate protections for consumers, without limiting the receipt of important information, or interfering with business needs, or contravening the borrower's intensions for receiving calls on his or her cell phone.

Modification of the current rule in such a manner that would prohibit servicers from using all available technological means to attempt contact with borrowers who have provided their cellular phone numbers to the mortgage servicer would limit mortgage servicers' ability to provide critical information about their loan and to help borrowers cure their delinquencies and remain in their homes. Surely it is not the intent of the FCC to prohibit such calls. In today's

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[9] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Request of ACA International for Clarification and Declaratory Ruling,* CG Docket No. 02-278 (Declaratory Ruling adopted December 28, 2007) ¶ 9.
[10] *Supra*.
[11] *Supra* at ¶ 10.

society, cell phones are often the only phone used by consumers. According to the National Center for Health Statistics May 12, 2010, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey*, approximately 25 percent of consumers do not have a land line and rely solely on a cell phone.[12]

It is important to note that servicers do not leave intrusive messages. The purpose of most messages is to ask the borrower to contact the servicer for important information about their loan. In most cases, the message states the servicer's name, phone number and asks for a return call. But even in cases where substantive information is provided, servicers comply with applicable privacy rules and the federal Fair Debt Collection Practices Act (FDCPA), which limits the amount of information that can be left on message machines in many cases and, thus, further protects borrowers.

MBA urges the FCC to retain and codify its 07-232 Declaratory Ruling. Mortgage servicers should be permitted and even encouraged to make collection and loss mitigation calls using an auto dialer and prerecorded voice calls to any number that has been provided by the customer, including mobile phone numbers, without having to obtain additional prior express *written* consent. The use of these two technologies allows servicers to reach a greater number of borrowers than would otherwise be possible through manual dialing or live messaging, which are no longer realistic given the number of borrowers servicers are trying to reach today.

B. <u>FCC's proposed rule exceeds the goal of "harmonizing" with the FTC's Telemarketing Sales Rule with respect to use of auto dialers to call cellular phones.</u>

The FCC indicates that a primary goal of the proposed rule is to harmonize the TCPA with the FTC's TSR. We understand the FCC's desire to ensure consistency across business sectors, but we do not believe uniformity is achieved by the proposed rule.

First, Part 310 of the FTC's TSR does not mention auto dialers. The FTC, therefore, does not restrict the use of auto dialers to cell phone numbers. As a result, no amendment to the FCC's current rule is required to prevent inconsistency between the obligations imposed by the FTC and the FCC. In fact, no additional restriction by the FCC concerning auto dialers is necessary.

Second, the reach of FCC's TCPA[13] is far greater than the FTC's TSR. The FTC's TSR rule regulates exclusively "telemarketers" and "sellers", while the FCC's proposed rule limiting calls to mobile phones reaches a much broader type of call, including debt collection and informational messages.

The FTC's TSR limits "prohibited deceptive telemarketing acts or practices" by any "seller" or "telemarketer."[14] It defines a "seller" as "any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration."[15] The rule further defines telemarketer as "any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor."[16] The language describing delivery restrictions in the FCC TCPA proposed

[12] Blumberg, Stephen J. and Julian V. Luke (May 12, 2010). *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey,* July – December 2009 at p.1. *See:* http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201005.pdf
[13] FCC Telephone Consumer Protection Act, 47 C.F.R. § 64.1200 (2009).
[14] FTC Telemarketing Sales Rule, 16 C.F.R. § 310.3 (2009).
[15] FTC Telemarketing Sales Rule, 16 C.F.R. § 310.2 (z) (2009).
[16] FTC Telemarketing Sales Rule, 16 C.F.R. § 310.2 (b)(b) (2009).

rule is much broader. It states, "No person or entity may: (1) Initiate any telephone call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice."[17]

Given the fact that the FTC's authority is limited to telemarketing calls, the FCC has the flexibility to retain the current treatment of debt collection calls to cell phones without being inconsistent with the TSR. Again, we respectfully urge the FCC to codify its 07-232 Declaratory Ruling.

C. Available technology should be used to the customer's advantage.

As stated previously, mobile phones are the only phone for many people, representing a new trend of wireless-only households. People move and many times financial institutions and other entities are not provided a new residential phone number or physical address, but a cell phone number often stays the same. This makes cell phone numbers potentially the only option to contact a borrower. It is worth noting that servicers do not use auto dialers in the same manner as telemarketers – there is no sequential or random number use; rather servicers restrict their calls to known phone numbers for existing customers to proactively reach out to them. In the case of collection and loss mitigation efforts, the auto dialers are further restricted to delinquent or at-risk customers. The dialers are programmed in many cases to call the highest risk customers first and thus calling cycles are not done randomly, but within specific risk parameters. The FCC's concerns, therefore, with auto dialer use should not apply to mortgage loan servicers. For all of the reasons discussed, the FCC should not impose rules that would limit important contacts by mortgage servicers which can make the difference in whether a borrower can remain in their home.

III. MBA Comments Regarding Calls to Residences

A. MBA seeks confirmation that the servicing industry's efforts to reach delinquent or defaulted borrowers with regard to loss mitigation options, including various repayment plans, loan modifications and refinances are not "telemarketing" calls or "unsolicited advertisements" and fit within the existing exemptions.

FCC's Declaratory Ruling FCC 07-232 provides that debt collection calls do not constitute telemarketing and thus calls "regarding debt collection or to recover payments are not subject to the TCPA's separate restrictions on "telephone solicitations."" This ruling reinforced the FCC's prior 1992 Order holding that debt collection calls are exempt from the rules limiting artificial or prerecorded messages to residences. FCC's *1992 TCPA Order,* concludes "that an express exemption for debt collection calls to residences was unnecessary as such calls fall within the exemptions adopted for commercials calls which do not transmit an unsolicited advertisement …"[18]

Calls regarding loss mitigation options are, in effect, debt collection calls inasmuch as they are calls made in attempt to work with the borrower to cure past due amounts owed or to avoid imminent default by the borrower. They are not telemarketing calls and do not transmit an unsolicited advertisement. Consistent with debt collection calls, loss mitigation calls seek to collect the debt, but in a manner that is mutually beneficial to the debt holder and borrower. The

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[17] 75 Fed. Reg. No. 54 at 13471, 13481 (2010) (to be codified at 47 C.F.R. § 64.1200) (proposed March 22, 2010).
[18] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Request of ACA International for Clarification and Declaratory Ruling,* CG Docket No. 02-278 ¶ 4 *(citing 1992 TCPA Order, 7 FCC Rcd at 8773, ¶ 39.).*

servicer often grants forbearance plans or modifications that temporarily or formally change existing contractual terms in order to ensure greater success of collection and ultimately retention of the home for the borrowers. In addition, servicers perform partial claims, short sales and deeds in lieu of foreclosure. It is important to point out that the administration has also adopted these options within its Making Home Affordable Program created by the Obama administration and administered through Treasury.

The government has also created new loss mitigation refinance products to help borrowers achieve affordability. Specifically, Congress created the Hope for Homeowners refinance program that combines a refinance with a principal reduction. The administration created the HARP, and HUD announced its new refinance program that attempts to correct certain challenging aspects of the Hope for Homeowners program. These programs address a specific set of borrowers who are unable to qualify for HAMP due their debt to income ratios and the current status of the loan, but who could benefit from refinancing the terms of their loans. (See Exhibit A for a description of all current loss mitigation efforts.)

Servicers do not want to foreclose on homeowners and have pursued common law rights of mitigation for decades to achieve this goal whenever possible. Accordingly, we respectfully urge the FCC to affirmatively confirm in the final rule that loss mitigation calls are not 'telemarketing' but, at most, are "commercial calls that do not transmit unsolicited advertisements," the same as debt collection calls.

B. <u>The FCC should retain the established business relationship exemption.</u>

The FCC proposes to remove the established business relationship (EBR) exemption in connection with the general prohibition on calling residential numbers using a prerecorded or artificial voice recording. MBA urges the FCC to retain its EBR exemption. The FCC noted in its 1992 rulemaking, "requiring actual consent to prerecorded message calls where the [established business] relationships exist could significantly impede communications between business and their customers."[19] This is true today within the context of the financial services industry where borrowers have fewer mortgage choices given the constriction in the availability of mortgage money. Customers with certain mortgage products, such as adjustable rate mortgages, would likely welcome a message from their lender describing other loan products or rates, when their ARMs are close to resetting. Moreover, a prerecorded call is probably the least intrusive type of message that can be delivered. Removing the ability to call customers with important information would harm the consumer and be contrary to good customer service.

IV. <u>Collection of Written Express Consent Will Be Extremely Burdensome</u>

The Commission seeks comment on whether Congressional concerns expressed nearly two decades ago regarding the potential burdens of a written consent requirement remain relevant today in light of the multitude of "quick and cost" effective options now available for obtaining written consent, other than traditional pen and paper.

Despite improvements in technology, collecting signatures electronically has numerous challenges, especially given the additional hurdles a business must evidence, including clear and conspicuous disclosures and unambiguous consumer consent.

First, acquiring signatures electronically requires that a borrower, in most cases, have a computer and a means to transmit or approve the signature. Second, the process requires

[19] 75 Fed. Reg. No. 54 at 13471, 13475 (2010) (to be codified at 47 C.F.R. § 64.1200) (proposed March 22, 2010).

diligence and patience because there are several screens to be completed and approved to verify disclosures and electronic signature. Third, there does not appear to be an effective way to communicate to the borrower the importance of providing written consent or the implications of opting out (which applies to all future "telemarketing" calls from the company not just calls for that particular purpose or product e.g., credit card versus identity theft protection).

To the extent that recordations of verbal approval are permissible as "written consent", the ability to get and retain such approvals is also problematic. First, servicers and other businesses do not have the capacity to store all recordings for five years as required by the TCPA.[20] Second, different technological and interconnectivity capacities of branch offices versus servicing divisions, call centers, etc., will hamper the ability to effectively offer this option. Third, as stated above there is no effective way to communicate the need or importance of providing such approval. This is especially true for existing customers who would have to take time out of their day to grant approval for the lender to call them regarding future information. By the time a problem develops, receiving such approval will be nearly impossible because there does not appear to be a workable way to call the borrower to get the approval. Given these obstacles, we fear most customers who cannot be called will be lost to foreclosure.

As stated previously, MBA does not believe mortgage servicers are required to obtain prior written consent to call residences regarding loss mitigation and other informational calls for the reasons discussed above. Moreover, we believe that mortgage servicers should not have to obtain separate or duplicate consent to call a borrower's cell phone for loss mitigation purposes. Nonetheless, the servicing industry does have experience with how difficult it is in obtaining signatures from borrowers, and it is no easy task, even today when there is no substantial written consent obstacle. Freddie Mac conducted research indicating that 57 percent of delinquent borrowers are unaware of workout options.[21] This occurs despite numerous phone calls made and letters sent by servicers. What is even more telling, however, is the significant number of borrowers who fail to sign modification agreements that will save their homes. If borrowers are unable or unwilling to sign a document that will substantially reduce their mortgage payments and avoid foreclosure, we do not see any likelihood or hold out any hope that distressed borrowers will sign authorizations to allow servicers to call them. Contact rates will plummet.

V. Impact on State Laws that Impose Contact Requirement

Telephone outreach to consumers concerning loan modifications and foreclosures has become so important that state legislatures are beginning to pass laws requiring telephone conversations with consumers as part of foreclosure procedures.

California SB 1137, signed by the governor on July 8, 2008, requires that after a first-class letter is sent with information about how to contact a HUD-certified housing counseling agency, attempts to contact the borrower via telephone must be made. Section 2(g)(2)(A)[22] requires the mortgagee, beneficiary, or authorized agent to contact the borrower by telephone at least three (3) times at different hours and on different days. In addition, the law requires that telephone calls shall be made to the primary number on file. The law explicitly states that borrowers may be contacted "using an automated system to dial borrowers, provided that, if the telephone call

[20] "We conclude that the retention period for both the national and company- specific do- not-call requests will be five years." *FTC Order*, 68 Fed Reg 4580 at 4640 (Jan 29, 2003).
[21] *Foreclosure Avoidance Research: A follow-up to the 2005 benchmark study*, Freddie Mac, 2008. *See:* *http://www.freddiemac.com/service/msp/pdf/foreclosure avoidance dec2007.pdf*
[22] SB 1137, 2007-2008 Sess., 2008 Cal. Law.

is answered, the call is connected to a live representative of the mortgagee, beneficiary or authorized agent."[23]

The governor in Washington state signed SB 5810 into law on April 30, 2009, requiring "that a trustee, beneficiary, or authorized agent may not issue a notice of default under RCW 61.24.030(8) until thirty days after initial contact with the borrower is made …"[24] The law further requires due diligence in contacting a borrower. Due diligence requires, "After the letter has been sent, the beneficiary or authorized agent shall attempt to contact the borrower by telephone at least three (3) times at different hours and on different days. Telephone calls must be made to the primary and secondary telephone numbers on file with the beneficiary or authorized agent." In addition, calls may be made "using an automated system to dial borrowers if the telephone call, when answered, is connected to a live representative of the beneficiary or authorized agent."[25]

The FCC proposed rule conflicts with these state laws and in some cases would void sections of these acts. If adopted, the proposed rule would add to the complexity of the contact process in these states, delay contact with the borrower by imposing a manual process, and yet not reduce the number of calls the borrower receives as required by these state laws.

VI. The FCC's Authority to Requires Prior *Written* Consent

The FCC requests comments on whether it has the authority to adopt a prior written consent requirement similar to the FTC. MBA has examined the information offered to the Commission in its *Notice of Proposed Rulemaking, FCC 10-18* and the legislative history associated with the statute.

While the term "prior express consent" appears in both sections 227(b)(1)(A) and (b)(1)(B) of the Communications Act, the statute is silent regarding the precise form of such consent (i.e., oral or written). Certain comments in the legislative history, however, suggest that Congress may have contemplated that consent may be obtained orally or in writing.[26]

We note that the FCC itself remarks that the bill, as reported out of the Senate, would allow automated calls, including prerecorded messages, to be sent so long as the called party gives his or her prior express consent either orally or in writing.[27]

When discussing the Telephone Advertising and Consumer Rights Act, the House Committee on Energy and Commerce Report stated, with regard to the meaning of telephone solicitation:

> "The term does not apply to calls or messages where the called party has in essence requested the contact by providing the caller with their telephone number for use in normal business communications. In addition, if a subscriber has given "prior express permission or invitation" to a telephone solicitation, this consent renders the call solicited and relieves the caller of liability for relying on such permission." [28]

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[23] *Supra* at § 2(g)(2)(B).
[24] SB 5810, 61st Leg., 2009 Regular Sess. Wash. Law.
[25] *Supra* at § (5)(b)(ii).
[26] 75 Fed. Reg. 13471, 13474 (2010) (to be codified at 47 C.F.R. §64.1200) (proposed March 22, 2010).
[27] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,* CG Docket No. 02-278 (Notice of Proposed Rulemaking released Jan. 22, 2010) (*"NPRM"*) ¶ 17, n.55 (citing S. Rep. 102-178, 102d Cong., 1st Session (Oct. 8, 1991) at 5.).
[28] H.R. Rep. No. 317, 102nd Cong., 1st Sess. 13 (1991).

The FCC further quotes the House Congressional Record as saying, "the Committee did not attempt to define precisely the form in which express permission or invitation must be given, but did not see a compelling need for such consent to be in written form."[29]

The Senate Committee on Commerce, Science, and Transportation was having similar discussions about consent. In their report about the Automated Telephone Consumer Protection Act, it stated, "The reported bill deletes the requirement that all consent must be in writing. Many persons order goods over the phone and may give their oral consent to being called back by a computer telling them that their product is ready for pickup. The reported bill allows the consent to be given either orally or in writing."[30]

MBA urges the FCC to have careful reflection of the Congressional Record before prohibiting verbal consent.

VII. Conclusion

While we acknowledge the need for laws protecting subscribers from annoying telephone calls, we are particularly concerned that servicing troubled borrowers could be hampered by changes to the TCPA. We believe that these changes may cause unintended consequences.

MBA urges FCC not to require prior written consent for auto dialed and prerecorded voice calls to mobile phones if the borrower has provided the mobile phone number to the party making the call. MBA also respectfully requests FCC's confirmation that calls made in relation to all types of loss mitigation, including loan modifications, refinances and other payment plans, do not constitute 'telemarketing' and do not require prior written consent for prerecorded calls made to residential phones.

Any rules that would restrict the ability of mortgage servicers to reach borrowers to discuss their home loans would be directly contrary to the mandates of the Obama administration, Congress, HUD and VA in addition to various state legislatures, all of whom are making efforts to help borrowers save their homes.

We look forward to assisting the FCC in developing final regulations. For questions or further information, please do not hesitate to contact Sandra Troutman, Director of Public Policy, at stroutman@mortgagebankers.org or (202) 557-2858.

Sincerely,

John A. Courson
John A. Courson
President and Chief Executive Officer
Mortgage Bankers Association

[29] *Supra*.
[30] S. Rep. No. 262, 102nd Cong., 1st Sess. 5 (1991).

Exhibit A—Summary of Current Foreclosure Avoidance Efforts

Today's economic and political environment has prompted the government to take action and encourage loan modifications, repayment plans and other solutions so people can stay in their homes or can gracefully exit their homes if unable to retain them. The Obama administration, Congress and state and federal regulators and state legislatures encourage borrower communications in an effort to keep consumers in their homes.

Home Affordable Modification Program (HAMP) – A loan modification program created by the Obama administration and administered by Treasury that requires participating servicers to modify eligible borrower's first mortgage payments to 31 percent of their income. If borrowers are unable to qualify for HAMP, servicers are required to evaluate the borrower under their own proprietary modification programs. If the borrower is unable to qualify for a modification, servicers participating in the Making Home Affordable Program are required to evaluate the borrower for a Treasury created HAFA program.
https://www.hmpadmin.com/portal/programs/hamp.html

Home Affordable Foreclosure Alternatives (HAFA) – A foreclosure alternative program created by the Obama administration and administered by Treasury to require short sales and deeds in lieu of foreclosure if the HAMP modification fails or is not available to the borrower. The borrower benefits by avoiding foreclosure and a deficiency judgment and receives relocation funds. https://www.hmpadmin.com/portal/programs/foreclosure_alternatives.html

Home Affordable Refinance Program (HARP) – A program created by the Obama administration to give homeowners with loans owned or guaranteed by Fannie Mae or Freddie Mac an opportunity to refinance into more affordable monthly payments despite declines in property values that would otherwise prohibit them from refinancing.
http://makinghomeaffordable.gov/eligibility.html

Hope for Homeowners (H4H) – a program created by Congress that involves a voluntary principal reduction by the mortgage holder combined with an FHA refinance. The HOPE for Homeowners program will refinance mortgages for borrowers who are having difficulty making their payments, but can afford a new loan insured by FHA.
http://fhasecure.gov/offices/adm/hudclips/letters/mortgagee/2009ml.cfm

FHA HAMP – A program created by Congress and administered by FHA, whereby FHA is authorized to defer up to 30 percent of the outstanding principal balance and arrearages through the execution of a partial claim and subordinate note and mortgage. To qualify, a borrower's mortgage must be insured by FHA and their mortgage payment must exceed 31 percent of their gross income. Only owner-occupied homes qualify and a borrower must be at least 30 days past due. https://www.hmpadmin.com/portal/programs/fha_hamp.html

Forbearance or Special Forbearance – A program available to borrowers through FHA, VA, Fannie Mae, Freddie Mac, and private lenders and servicers that allows the borrower to defer some or all of the monthly payments for a period of financial hardship. Forbearances are usually combined with a repayment plan, modification or partial claim. http://www.hud.gov/offices/hsg/sfh/nsc/faqnsctc.cfm

Repayment Plan – an oral or written agreement granting the borrower time to repay the arrearage without going to foreclosure. http://www.hud.gov/offices/hsg/sfh/nsc/faqnsctc.cfm

Modification – A temporary or permanent change to one or more terms of the mortgage. Generally, the interest rate and maturity date are changed in order to achieve the greatest level of payment reduction possible. Arrearages are also added to the debt to bring the loan immediately current. http://www.hud.gov/offices/hsg/sfh/nsc/faqnsctc.cfm

Partial Claim – A program used primarily by FHA which allows the borrower to defer payment of the amount of the arrearage by executing a partial insurance claims and subordinate mortgage and note. Lenders and investors also employ this option. http://www.hud.gov/offices/hsg/sfh/nsc/faqnsctc.cfm

Short Sales (aka compromise sales, preforeclosure sales) – A program that allows the borrower to sell the property to an unrelated third party for less the debt owed. http://www.hud.gov/offices/hsg/sfh/nsc/faqnsctc.cfm

Deed in Lieu of Foreclosure – A program that allows the borrower to deliver title to the lender without going through foreclosure sale usually in satisfaction of the mortgage. http://www.hud.gov/offices/hsg/sfh/nsc/faqnsctc.cfm

Assumptions – Allows a borrower to sell the home and obtain a replacement debtor for the loan. http://www.hud.gov/offices/hsg/sfh/nsc/faqnsctc.cfm

Home Affordable Unemployment Program (UP) – A program to assist unemployed borrowers, which grants borrowers a forbearance plan during which regular monthly mortgage payments are reduced or suspended. https://www.hmpadmin.com/portal/docs/hamp_servicer/sd1004.pdf

FHA's new affordable refinance product – Programmatic changes made by FHA to its refinance program to resolve problems with the Hope for Homeowners program. This program allows borrowers to refinance of an underwater mortgage not insured by FHA if the lien holder reduces principal to FHA requirements. The program allows for a much lower credit score and the risk of default (claims) are paid through TARP funds. http://makinghomeaffordable.gov/docs/FHA_Refinance_Fact_Sheet_032510%20FINAL2.pdf

An important part of the government-sponsored loss mitigation programs mentioned above is telephone outreach. The proposed revisions to TCPA negatively impacts outreach efforts and has prompted our concerns.